



June 26, 2000

Mr. William T. Armstrong
Langley & Banack, Incorporated
745 East Mulberry
San Antonio, Texas 78212-3166

OR2000-2433

Dear Mr: Armstrong

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136496.

The Northside Independent School District (the "district"), which you represent, received a request for "a list of the certified employees of the Northside Independent School District, specifically those that have indicated that they will be retiring this year." You indicate that you have made available for inspection "a list of certified employees of [the district] that have not elected to keep their names and addresses confidential." You claim that the list of employees who have announced their intent to retire this year is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, you acknowledge that section 552.022(a)(2) mandates that the district provide "a list of certified employees to [the requestor], excluding, of course, those employees who have elected to have their names and addresses kept confidential under TEX. GOV'T CODE §552.024." Section 552.117 of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family information of employees of governmental bodies who elect under section 552.024 to have such information kept confidential. Gov't Code § 552.117(1). However, section 552.117(1) does not make the names of employees of governmental bodies confidential. Therefore, you must release to the requestor the names of the district employees. If an employee or former employee has made an election pursuant to section 552.024, the district must not disclose the employee's home address or home telephone number. Gov't Code § 552.117(1).

You assert that the list of employees who have indicated an intention to retire this year is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.

Section 552.101 encompasses the common law right to privacy. Section 552.102 protects “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The protection of section 552.102 is the same as that of the common law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.). A governmental body may withhold information as protected by the common law right to privacy if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Having carefully reviewed your arguments and the submitted information, we conclude that the list of potential retirees is not protected by the common law right to privacy. Therefore, you must release the list to the requestor, with the exception of information protected under section 552.117(1) as discussed above.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 136496

Encl. Submitted documents

cc: Mr. John Boecker
A.G. Edwards & Sons, Inc.
70 N.E. Loop 410
San Antonio, Texas 78216
(w/o enclosures)